

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION**

IN RE:

EASTERN LIVESTOCK CO., LLC,

Debtor.

Case No. 10-93904-BHL-11
Chapter 11

**MOTION OF DINSMORE & SHOHL AND RECEIVER FOR
PERMISSION TO SEEK ALLOWANCE OF PRE-PETITION
ATTORNEY AND RECEIVER FEES AND REIMBURSEMENT
OF PRE-PETITION EXPENSES IN THE RECEIVERSHIP COURT**

State Court-Appointed Receiver, Elizabeth Lynch (the "Receiver") for Eastern Livestock Co., LLC (the "Debtor") and Dinsmore & Shohl, LLP ("D&S"), as counsel for the Receiver, hereby respectfully move this Court for an order permitting D&S and the Receiver to seek allowance from the state court in which the receivership action was brought (the "Receivership Court") of pre-petition receiver fees and expenses incurred by the Receiver and her employer, Development Specialists, Inc. ("DSI") and pre-petition attorney fees and expenses incurred by D&S to be paid out of a pre-petition IOLTA account (the "Motion"). In support of this Motion, D&S and the Receiver respectfully states as follows:

BACKGROUND

1. On November 10, 2010, the Receivership Court appointed the Receiver to serve as a receiver for the Debtor. The Receiver is and was at all times since her appointment, an employee of DSI. In order to facilitate the magnitude of responsibilities required to fully discharge the Receiver's duties, and to do so within the strict time constraints associated with the livestock industry, the Receiver utilized the services of additional personnel from DSI, as explicitly authorized by the Receivership Court. Additionally, the Receiver hired D&S as counsel to the Receiver.

2. In the period from November 10, 2010 to December 5, 2010, the Receiver, under counsel from D&S, and with the assistance of her employer DSI, served as receiver for Debtor. In

this same time period, funds totaling \$479,610.00 were transferred from the Debtor to D&S's IOLTA account (the "D&S IOLTA Account") as a retainer for services to be rendered by D&S, the Receiver, and her employer DSI.

3. On December 6, 2010, certain petitioning creditors filed this involuntary bankruptcy against the Debtor (the "Petition Date").

4. Pursuant to Orders of this court, the Receiver served as a custodian to the Debtor in these bankruptcy proceedings from the Petition Date until this Court's Order appointing a trustee on December 27, 2010 (the "Custodial Period").

5. On January 6, 2011, the Receiver filed in the Receivership Court: (a) Application by Receiver, Elizabeth M. Lynch, for Allowance of Attorney Fees and Reimbursement of Expenses Incurred, attached hereto as Exhibit A; and (b) Application by Elizabeth M. Lynch for Allowance of Attorney Fees and Reimbursement of Expenses Incurred by the Receiver, attached hereto as Exhibit B.

RELIEF REQUESTED

6. D&S and the Receiver respectfully request that this Court enter an Order allowing the Receiver to seek allowance from the Receivership Court of pre-petition attorney and receiver fees and reimbursement of expenses out of the D&S IOLTA Account.

7. The money in the D&S IOLTA Account was transferred pre-petition and thus not property of the bankruptcy estate. Therefore, D&S and the Receiver believe that bankruptcy court approval for the state court fee application actions to proceed is not necessary.

8. However, in an abundance of caution, and in light of the fact that an objection by a creditor in the bankruptcy proceedings was filed to the state court fee applications, D&S and the Receiver ask that this Court expressly permit the Receiver to continue pursuing its state court fee

applications for pre-petition attorney and receiver fees and expenses, or, if this Court wishes to, review for approval the fees and expenses set forth in Exhibits A and B.

9. As is evidenced by the Receivership Court fee applications, the Receiver is requesting \$267,118.66 in Receiver fees and expenses and \$147,451.01 in attorney fees for D&S, for a total of \$414,569.67 in fees and expenses. As noted above, there is a total of \$479,610.00 being held in the D&S IOLTA account. D&S and the Receiver therefore ask that the Receiver be permitted to continue with its application in the Receivership Court for these pre-petition amounts, and that the rest of the D&S IOLTA Account monies be applied to pay and reimburse post-petition attorney and receiver fees and expenses in accordance with the motion of the trustee filed concurrently herewith.

CONCLUSION

WHEREFORE, for the reasons set forth above, the D&S and the Receiver respectfully ask the Court to enter an order, substantially in the form attached hereto as Exhibit C, and granting such other relief as it deems just and proper.

Dated: February 9, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2011, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on February 9, 2011, a copy of the foregoing pleading was served via electronic mail transmission on the following:

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